

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EARL D. WARNER,

Defendant.

Criminal Action

No. 12-107

Transcript of proceedings on January 24, 2014,
United States District Court, Pittsburgh, Pennsylvania,
before Arthur J. Schwab, District Judge

APPEARANCES:

For the Government: Carolyn J. Bloch, Esq.

For the Defendant: David B. Chontos, Esq.

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1 (Proceedings held in open court; January 24, 2014.)

2 (Jury not present.)

3 (Defendant not present.)

4 THE COURT: Good morning.

5 We are gathered together for Criminal No. 12-0107.

6 I would ask counsel for the Government to enter your
7 appearance, please.

8 MS. BLOCH: On behalf of the United States, Carolyn
9 Bloch.

10 THE COURT: Welcome. On behalf of the Defendant?

11 MR. CHONTOS: Your Honor, David Chontos on behalf
12 of Mr. Warner. I would note Mr. Warner is not present and
13 that's okay with me.

14 THE COURT: Because we are just talking about the
15 final jury instructions, right?

16 MR. CHONTOS: Absolutely.

17 THE COURT: Any objections, comments, or
18 corrections on the final jury instructions filed at Document
19 No. 135 on behalf of the Government?

20 MS. BLOCH: None on behalf of the Government,
21 Your Honor.

22 THE COURT: On behalf of the Defendant?

23 MR. CHONTOS: Yes, Judge. I think it might be --
24 at certain points -- I am going to walk through document 135
25 and at certain points I have suggested some language, and I

1 think rather than me reading it I am going to show and read
2 it.

3 THE COURT: Okay. You may begin.

4 MR. CHONTOS: Thank you.

5 Judge, at Page 5, the fourth line down, it begins a
6 sentence: After you have reached a verdict, you are not
7 required to talk.

8 THE COURT: Correct.

9 MR. CHONTOS: How I believe that sentence should
10 read is: After you have reached a verdict, you not required
11 to talk, but you may talk if you so choose.

12 THE COURT: Where do you get that change? Document
13 135 is coming out of suggested jury instructions from the
14 Third Circuit model instructions. So did we misquote that
15 instruction?

16 MR. CHONTOS: Well, the --

17 THE COURT: My question is, did we misquote the
18 instruction?

19 MR. CHONTOS: I don't believe so.

20 THE COURT: Okay. So you are asking for an
21 addition?

22 MR. CHONTOS: Well, what I believe is somewhat
23 offensive language is the bracketed material, what I have
24 bracketed, "with anyone about the case unless I order you to
25 do so." Judge, after they have reached their verdict, they

1 have discharged their function in our system, so I am not so
2 sure you have the power anymore to tell them to talk or not
3 talk.

4 THE COURT: Well, they will not be discharged from
5 my system, as you put it, for over a year because they have a
6 right to counseling for over a year after they render a
7 verdict.

8 MR. CHONTOS: That's news to me.

9 THE COURT: Well, it's provided for, they get
10 counseling sessions if they want to, and so they remain within
11 my jurisdiction for a year.

12 MR. CHONTOS: Okay.

13 THE COURT: What is your next one?

14 MR. CHONTOS: Well, I am still on that --

15 THE COURT: So I overrule that objection.
16 Next one, please.

17 MR. CHONTOS: Judge, at the top of Page 6, in
18 parenthesis No. 3: Any fact or testimony that was stipulated.

19 There's been no stipulations, so I don't think it
20 is appropriate to interject something that is really not part
21 of the case.

22 THE COURT: Agreed?

23 MS. BLOCH: Agree.

24 THE COURT: So we will eliminate Item No. 3 at the
25 top of Page 6.

1 Next, please.

2 MR. CHONTOS: Top of Page 7, first full sentence
3 that begins: When I allowed evidence. I don't have a
4 recollection of any piece of evidence coming in where you
5 limited it for purpose A or purpose B and things of that
6 nature.

7 THE COURT: Any objection to deleting that
8 sentence?

9 MS. BLOCH: No objection.

10 THE COURT: The sentence -- the first full sentence
11 at the top of Page 7 will be deleted.

12 MR. CHONTOS: Continue, Judge?

13 THE COURT: Sure.

14 MR. CHONTOS: Page 8, exhibits.

15 THE COURT: Okay.

16 MR. CHONTOS: Here's how I think that should read:
17 The exhibits met the requirements of the Rules of Evidence
18 and, therefore, have been admitted for your consideration.
19 Any inference or conclusion you draw from any exhibit is
20 within your power as a fact-finder.

21 What I find problematic with that is the defense
22 and the Government agreed to the exhibits. That isn't
23 necessarily so. Because we have objections, you overruled
24 them, and, bang, they go in. So, again, what I think that
25 sentence should read is: The exhibits meet the requirements

1 of the Rules of Evidence and, therefore, have been admitted
2 for your consideration. Any inference or conclusion you draw
3 from any exhibit is within your power as the fact-finder.

4 THE COURT: How is that different than what we say
5 where "this does not mean the parties agree as to the
6 inferences or conclusions that you should or may draw from any
7 exhibit?"

8 MR. CHONTOS: The phrase in that last sentence,
9 "parties agree," references back to the first sentence,
10 "counsel for the Government and Defendant have agreed."

11 THE COURT: It says they don't agree. "This does
12 not mean the parties agree."

13 MR. CHONTOS: Well, clearly the first sentence says
14 that they have. I don't think that's accurate. We raised
15 objections, they were overruled.

16 THE COURT: What change, if any, do you want for
17 sentence one, please?

18 MR. CHONTOS: Sentence one should read: The
19 exhibits meet the requirements of the Rules of Evidence and,
20 therefore, have been admitted for your consideration.

21 THE COURT: You want the first sentence deleted, is
22 that what you're now saying?

23 MR. CHONTOS: And the first five words of sentence
24 No. 2.

25 THE COURT: Any objection to deleting the first

1 sentence?

2 MS. BLOCH: No objection.

3 THE COURT: Now, the second sentence, how do you
4 want the second sentence to read?

5 MR. CHONTOS: Well, Judge, it's really -- I have
6 combined sentence one and two into one sentence.

7 THE COURT: This is not very helpful to the Court.
8 I have a jury that wants to come out here in 12 minutes. You
9 need to articulate to me, please, clearly what you want
10 deleted, what you want added. But just general comments don't
11 help me. So what do you want done to the second sentence,
12 please?

13 MR. CHONTOS: I want the first five words
14 eliminated.

15 THE COURT: So the sentence will start, "meet the
16 requirements of the Rules of Evidence."

17 MR. CHONTOS: No. That phrase, "meet the
18 requirements," gets combined with the single phrase, "the
19 exhibits."

20 THE COURT: You want the words, "the exhibits then
21 meet?"

22 MR. CHONTOS: Judge, my first sentence in that
23 would read as follows: The exhibits meet the requirements of
24 the Rules of Evidence and, therefore, have been admitted for
25 your consideration.

1 THE COURT: So you are asking that "this means that
2 these exhibits" gets deleted and in its place you want the
3 words, "the exhibits?"

4 MR. CHONTOS: Judge, could I show you? I think
5 that might help.

6 THE COURT: Again, you are confusing me. How about
7 this: The exhibits meet the requirements of the Rules of
8 Evidence and, therefore, have been admitted for your
9 consideration.

10 MR. CHONTOS: Judge, that's what I have been
11 saying.

12 Then I believe the second sentence in my proposal
13 would then just say: Any inference or conclusion you draw
14 from any exhibit is within your power as the fact-finder.

15 THE COURT: Any objection to those changes?

16 MS. BLOCH: Say it one more time, please.

17 MR. CHONTOS: Sure. Any inference or conclusion
18 that you draw from any exhibit is within your power as the
19 fact-finder.

20 MS. BLOCH: No objection.

21 THE COURT: Let me read the whole thing to you in a
22 moment. The paragraph beginning with "exhibits" at the top of
23 Page 8 will read: The exhibits meet the requirements of the
24 Rules of Evidence and, therefore, have been admitted for your
25 consideration. Any inference or conclusion that you draw from

1 any exhibit is within your power as a fact-finder.

2 Is that correct?

3 MR. CHONTOS: That's acceptable.

4 THE COURT: Agreed?

5 MS. BLOCH: That's acceptable.

6 THE COURT: Next page, please.

7 MR. CHONTOS: Page 13, the very last line. That's
8 the first reference to the phrase, "impeached." I just don't
9 think that it's appropriate. Otherwise, if we keep it, we
10 need to inform the jury what does impeach mean.

11 THE COURT: Again, it would be helpful to me if you
12 would suggest exactly what you want either deleted or added,
13 then we will know specifically what you have in mind, please.

14 MR. CHONTOS: Judge, I gave my reasons and now I
15 was going to transition to what my suggestion is. For that
16 sentence I would just say: You are not required to accept
17 testimony even if the testimony was not contradicted, period.

18 THE COURT: So you would like to delete the words
19 "and the witness was not impeached."

20 MR. CHONTOS: Correct.

21 THE COURT: Any objection on behalf of the
22 Government?

23 MS. BLOCH: No objection.

24 THE COURT: Thank you.

25 MR. CHONTOS: Judge, please, 14.

1 THE COURT: Please.

2 MR. CHONTOS: The first indented paragraph begins:
3 In deciding what to believe.

4 We had child witnesses testify. There is no
5 separate instruction on child witnesses. So I think after
6 reviewing the Third Circuit's suggestion just include this
7 phrase, separated by commas, "in deciding what to believe,
8 comma, including the child witnesses who testified, comma,"
9 then leave it alone.

10 THE COURT: Any objection?

11 MS. BLOCH: Yes, I do object to that. I think that
12 there's no reason to be drawing any particular attention to
13 the children versus other witnesses at this stage.

14 MR. CHONTOS: Well --

15 MS. BLOCH: What is your basis for drawing
16 attention to that?

17 MR. CHONTOS: Well, one, it's part of the Third
18 Circuit standard instructions.

19 MS. BLOCH: About children?

20 MR. CHONTOS: That's my source, yes.

21 THE COURT: Well, I mean, where is that in the
22 proposed instructions that you previously filed? We all knew
23 children were probably going to testify, so, I mean, was that
24 in one of your earlier drafts to me?

25 MR. CHONTOS: No. But, Judge --

1 THE COURT: You are saying there is Third Circuit
2 language as to children witnesses?

3 MR. CHONTOS: Sure, absolutely. If you go to
4 Chapter 4, final instructions, consideration of particular
5 kinds of evidence, 4.17 is labeled child witness. I have used
6 it in the sense that, I mean, you could, just like law
7 enforcement is a witness, that is a whole separate
8 instruction.

9 But what I have done, based on the comments to
10 that, and there is some case law that is suggested, including
11 my prepositional phrase, would suffice. So I think I have
12 appeased the Government not having a separate instruction like
13 the law enforcement separate instruction with the child
14 witness, just within.

15 MS. BLOCH: Your Honor, does Mr. Chontos have a
16 copy of this proposed model jury instruction?

17 MR. CHONTOS: Judge, that's about 150 pages.

18 THE COURT: Well, that's why we have people meet
19 weeks ahead of time, come up with an agreement or
20 disagreements, then I rule ahead of time instead of, you know,
21 at the last minute when we have a jury sitting back there,
22 which is not courteous to our fellow citizens.

23 So you are suggesting to add the words, "including
24 any child witness," in the first sentence where it says, "in
25 deciding what to believe, including any child witness, you may

1 consider."

2 MR. CHONTOS: Any child witness who testified.

3 THE COURT: So there is child witnesses -- okay.

4 It seems duplicative, but --

5 MS. BLOCH: I would agree with the Court's reading
6 not "who testified," because that's readily apparent that
7 that's what he is speaking about. You have already
8 indicated --

9 THE COURT: I will add the words, "including any
10 child witness," since I believe "who testified" is
11 duplicative, so I will not add that.

12 Next, please.

13 MR. CHONTOS: Judge, Page 16, not required to
14 accept uncontradicted testimony. Again, it's consistent with
15 my position earlier, the end of the first sentence, I would
16 propose this being eliminated --

17 THE COURT: You are suggesting that on Page 16
18 under the section called not required to accept uncontradicted
19 testimony, that in the first sentence we delete the words "and
20 the witness is not impeached?"

21 MR. CHONTOS: Correct.

22 THE COURT: Any objection?

23 MS. BLOCH: No objection.

24 THE COURT: Next, please.

25 MR. CHONTOS: Same page, Judge, number of witnesses

1 not important. In the first sentence there's the word
2 "necessarily." I believe that should be eliminated because it
3 implies that with the right number of witnesses that might
4 push the weight meter toward one party's view of the evidence
5 more than the other.

6 THE COURT: I overrule that objection.

7 MR. CHONTOS: Judge, Page 17, not all evidence, not
8 all witnesses needed. Second paragraph that begins, "in this
9 case."

10 THE COURT: Yes.

11 MR. CHONTOS: My proposed read of the first
12 sentence would be: In this case the Defendant, Earl Warner,
13 presented evidence through various witnesses.

14 THE COURT: Any objection?

15 MS. BLOCH: No objection.

16 THE COURT: It will be admitted without
17 objection -- or changed without objection.

18 Next, please.

19 MR. CHONTOS: Judge, let's stay there. The
20 beginning of that very next sentence, in its present
21 incarnation it says "Mr. Warner." I believe it should begin,
22 "just like the Government, comma, Mr. Warner," and keep the
23 present language.

24 THE COURT: Any objection?

25 MS. BLOCH: Yes, I do object. I think that the

1 instructions as presently written already impose sufficient --
2 present sufficient information and impose a sufficient burden
3 on the Government.

4 THE COURT: I will overrule the suggestion from
5 defense counsel. I think it's clear up above what -- the
6 paragraph before that speaks about the Government. The next
7 paragraph speaks about the Defendant. So it's all covered at
8 one time and I don't think that phrase is necessary or
9 helpful.

10 Next, please.

11 MR. CHONTOS: Judge, credibility of witnesses,
12 Page 19. This is the separate law enforcement charge. Again,
13 it has that phrase or that word, "necessarily." Same
14 objection.

15 THE COURT: Overruled.

16 MR. CHONTOS: Judge, Page 20.

17 THE COURT: Please.

18 MR. CHONTOS: At the end of the first full
19 paragraph, that paragraph begins, "the presumption of
20 innocence." Here's my suggested language addition. It really
21 comes right after the phrase, "throughout the trial," and you
22 have a period. I would include a comma so it reads, "the
23 Government throughout the trial, including right now, period."
24 Even though the evidence has been presented and closing
25 arguments have been held, he is still presumed innocent. That

1 presumption stays with him unless and until you find him
2 guilty.

3 MS. BLOCH: I am sorry, I am not in the right
4 paragraph. I don't know where you are. So you are just
5 adding --

6 THE COURT: I overrule that objection.

7 Next, please. I am going to ask the deputy clerk,
8 would you go back to the jury and apologize to them and tell
9 them we will get to them as soon as we can, please. Thank
10 you.

11 MR. CHONTOS: Judge, Page 23 at the top, this is
12 the venue charge.

13 THE COURT: Please.

14 MR. CHONTOS: That first line up there, it is
15 really just, I suggest, an insertion of the word "venue" right
16 after the phrase, "this fact, venue, only has to be proved by
17 a preponderance of the evidence."

18 THE COURT: What about just adding, in place of
19 "this fact," instead of "this fact," we just put, "venue
20 only."

21 MR. CHONTOS: Great.

22 THE COURT: Any objection?

23 MS. BLOCH: That's fine. No objection.

24 THE COURT: So we are replacing "this fact," first
25 line, Page 23, with the word "venue."

1 Next, please.

2 MR. CHONTOS: Judge, Page 24. This is repetitive
3 of what we chatted about at document 91, the jointly proposed
4 jury charge. At the very bottom, single Defendant charged
5 with multiple offenses, the last paragraph, it reads: Your
6 decision on one offense, whether guilty or not guilty, should
7 not. That's discretionary language. It gives them wiggle
8 room. My position is that should read, "must not influence
9 your decision."

10 THE COURT: Any objection?

11 MS. BLOCH: No objection.

12 THE COURT: The change will be made without
13 objection. The word "should" will be substituted with the
14 word "must."

15 MR. CHONTOS: Judge, in the very next sentence,
16 "each offense should be considered separately," same, my
17 recommendation is that "must" should substitute for that word
18 "should."

19 THE COURT: Any objection?

20 MS. BLOCH: No objection.

21 THE COURT: So at the two sentences at the bottom
22 of Page 24 of Document No. 135, the word "should" in two
23 places will be substituted with the word "must."

24 MR. CHONTOS: Thank you. Judge, Page 30.

25 THE COURT: Please.

1 MR. CHONTOS: And we flushed this out earlier, so I
2 would rehash my earlier objection. "The Government is not
3 required to prove that Earl Warner knew his acts were against
4 the law." I don't have anything new, I just incorporate and
5 rest on my earlier objection to that sentence.

6 THE COURT: And I overrule that objection.

7 MR. CHONTOS: Judge, the very next part on that
8 same Page 30, sexually explicit conduct.

9 THE COURT: Please.

10 MR. CHONTOS: We did touch upon it earlier. We did
11 shrink that definition. Now that the evidence is all in, I
12 still don't believe that actual or simulated masturbation was
13 part of this case. So my suggestion would be to eliminate
14 that and just leave it as "lascivious exhibition of the
15 genitals or pubic area of any person."

16 MS. BLOCH: The Government objects as it did
17 earlier. I think that the term "masturbation" includes the
18 images where he is touching the girls.

19 THE COURT: I overrule the defense objection as I
20 did previously, but we did, as I said, as defense counsel
21 accurately says, shrink down the items of conduct included
22 within that definition.

23 MR. CHONTOS: Judge, Page 31, the next to the last
24 full paragraph that begins, "as to this last factor."

25 THE COURT: Please.

1 MR. CHONTOS: It is the second sentence that reads:
2 I instruct that you may consider whether the visual depictions
3 would appeal to persons who are sexually attracted to persons
4 of similar age to the person depicted.

5 Judge, what we are asking this jury -- it should be
6 eliminated because what we are asking this jury to do is look
7 at this photo and to see if it would be a turn-on to those
8 people who are sexually attracted to it. It requires them to
9 have a knowledge base of what people who are sexually
10 attracted to these photos, whether this one will satisfy that
11 dataset, that collective wisdom.

12 THE COURT: Any objection to deleting the sentence
13 at the bottom of Page 31 which begins, "I instruct that?"

14 MS. BLOCH: I actually think Mr. Chontos is reading
15 it incorrectly. I think what the particular sentence is,
16 whether the Court intends to include it or not, it is actually
17 saying: Would this appeal to someone who was of the same age
18 as the person depicted. It is not actually addressing --

19 THE COURT: Any objection to deleting the sentence?

20 MS. BLOCH: No objection.

21 THE COURT: The sentence in the next to last
22 paragraph on Page 31 which begins with the words "I instruct"
23 will be deleted.

24 Yes, sir.

25 MR. CHONTOS: Judge, Page 33, interstate/foreign

1 commerce. The last sentence there, "the law does not require
2 that," we hashed that out earlier. I would just renew my
3 objections. The Government's push-back is Sheldon, the Ninth
4 Circuit case. I understand that. It is supportive of their
5 request. We think Sheldon is, you know, wrongly decided, so
6 we object to that sentence.

7 THE COURT: I overrule your objection to the last
8 sentence on Page 33 of document 135.

9 MR. CHONTOS: Judge, I really have just two more.
10 One is, I mean, 404(b) evidence came in, but we don't have a
11 charge as to how they should compartmentalize that. Then,
12 secondarily, we don't have a charge on character. I have
13 proposed language on character. 404(b) we could do as the
14 standard charge.

15 THE COURT: The standard charge from the Third
16 Circuit, correct?

17 MR. CHONTOS: Absolutely. Judge, I also think that
18 there should be some reference from you as to, in their
19 exhibit binder, what is that 404(b).

20 THE COURT: I don't understand that.

21 MS. BLOCH: Before we go further, Your Honor, if I
22 may please object. First of all, we don't have 404(b)
23 evidence here because the Court made a pretrial ruling that
24 the evidence of images that were not within the confines of
25 any particular count were deemed to be intrinsic evidence and

1 not 404(b). So we would not have an instruction on 404(b) in
2 this case.

3 THE COURT: I will rule that I will not give a
4 charge for Defendant's uncharged bad acts or crimes pursuant
5 to Federal Rule of Evidence 404(b).

6 Your second point, please.

7 MR. CHONTOS: Judge, we had two character
8 witnesses. Here is my proposed jury charge.

9 THE COURT: Is there a Third Circuit one that's
10 applicable?

11 MR. CHONTOS: There is. Here's, just being honest
12 with the Court --

13 THE COURT: Do you have it written out or typed
14 out?

15 MR. CHONTOS: Handwritten, but my printing is very
16 good.

17 THE COURT: Do you want to read it, please.

18 MR. CHONTOS: Sure. "You heard evidence from the
19 defense that Earl Warner is a person of good character. I am
20 speaking of the defense witnesses who expressed their opinion
21 that Earl Warner was truthful and honest. The law recognizes
22 that a person of good character is not likely to commit a
23 crime that is contrary to that person's nature. Evidence of
24 good character made by itself raises a reasonable doubt of
25 guilt. You should consider this evidence together with and in

1 the same way as all the other evidence in this case in
2 deciding whether the Government has proved the charges beyond
3 a reasonable doubt."

4 THE COURT: Did you have a suggested charge back in
5 I believe document 91 dealing with character?

6 MR. CHONTOS: Did not.

7 THE COURT: Do you have the Third Circuit language?

8 MR. CHONTOS: Judge, I am looking at my little
9 cheat sheet to help find it. Yeah, it's at 439. Chapter 4,
10 consideration of particular kinds of evidence, 439.

11 THE COURT: I am going to print that out. I think
12 your language is certainly unbalanced. I don't mean you are
13 unbalanced, I just mean that --

14 MS. BLOCH: It sounds like a closing argument to
15 the Government.

16 THE COURT: Yes, it's much more like a closing
17 argument. Let me get the Third Circuit language up, please.
18 Third Circuit says: The Defendant's character evidence you
19 have heard, evidence about whether the Defendant has a
20 character trait for -- then it suggests truthfulness,
21 peacefulness, honesty, law-abiding. Which character trait did
22 you believe that evidence related to?

23 MR. CHONTOS: Truthful and honest.

24 THE COURT: Truthful and what?

25 MR. CHONTOS: Truthfulness and honesty.

1 MS. BLOCH: I would disagree, Your Honor. I think
2 at least in part the second character witness that was called
3 to testify was more in the like of testimony of being a good
4 person, being helpful and assisting. It didn't go to his
5 truth or veracity.

6 The first witness, I am trying to remember exactly
7 what she said, but -- does the Court recall what she spoke to?
8 Did she say her -- I apologize.

9 THE COURT: We will add that paragraph. Where did
10 you want that added, sir, please?

11 MR. CHONTOS: Judge, wherever the Court deems it to
12 be appropriate. That would be fine.

13 THE COURT: So the language is: "You have heard
14 evidence about whether the Defendant has a character trait for
15 helpfulness, truthfulness, and/or honesty. You should
16 consider this character evidence together with and in the same
17 way as all the other evidence in the case in deciding whether
18 the Government has proved the charges beyond a reasonable
19 doubt."

20 MR. CHONTOS: Judge, while I am appreciative of the
21 Court reading that, what the Court has not given me is the
22 following language: "Evidence of good character may by itself
23 raise a reasonable doubt of guilt." The comments to the Third
24 Circuit charge, Judge, address that and there is some
25 differing opinion right within our circuit on that.

1 THE COURT: I read that in the comment and I will
2 not include that in the charge.

3 All right. Any others, sir?

4 MR. CHONTOS: No, Judge, I am done. I really just
5 have a question. Now that we have gone through our jury
6 instruction, am I going to have to, before the jury leaves
7 when you are all done with the charge, just approach at
8 sidebar and set forth, hey, all my objections are remade?

9 THE COURT: You don't need to do that for me. If
10 you -- I think the objections are clear. If you feel you need
11 to do that for the record, then you should do whatever you
12 need to do. But you certainly don't need to do that for me.
13 I have done everything I can to make sure that there's a good
14 record, hopefully, of what your requests were and my rulings
15 thereon.

16 MR. CHONTOS: What I will do then, Judge, while
17 they are there, I will just stay at the table and say, Judge,
18 I am going to renew the earlier objections that I made
19 regarding the jury charge.

20 THE COURT: Fine.

21 MR. CHONTOS: Thank you.

22 MS. BLOCH: Your Honor, if I may, just for a
23 moment. One thing that I am searching for now that eluded me
24 when I reviewed this was the cautionary instruction that we
25 went through great discussion, and Mr. Warner himself

1 articulated that he did want as part of the final instruction
2 the Judge's proposed --

3 THE COURT: That's Roman numeral 3 of the
4 cautionary instruction.

5 MS. BLOCH: I am sorry.

6 MR. CHONTOS: It is in there.

7 MS. BLOCH: I kept going back through to make sure
8 I found it because I thought it was and when I couldn't find
9 it, I didn't want to --

10 THE COURT: It's Roman numeral 3 in our Document
11 No. 91.

12 MS. BLOCH: I didn't see it embodied in this
13 particular document, so I was concerned.

14 THE COURT: We need to make obviously these
15 corrections and reprint the 14 sets of jury instructions.

16 MR. CHONTOS: Judge, while that's going on, could
17 Mr. Warner be brought up just to shrink up that time?

18 THE COURT: Not yet because I have got to review
19 these changes first.

20 On Page 11, you wanted the paragraph about evidence
21 admitted for a limited purpose eliminated?

22 MR. CHONTOS: Judge, your Page 11 I don't think is
23 squaring up with mine. How about the title?

24 THE COURT: Evidence admitted for a limited
25 purpose.

1 MS. BLOCH: It is on Page 11.

2 THE COURT: Did you want that eliminated?

3 MR. CHONTOS: Correct, because it just wasn't part
4 of the case.

5 THE COURT: I think we have all of your changes.
6 If when we start reading through if I am incorrect about
7 something, don't hesitate to interrupt me, that's certainly
8 proper.

9 MR. CHONTOS: Judge, the Page 11, evidence admitted
10 for a limited purpose, I really raise that on Page 7, so is it
11 eliminated on the top of Page 7? There was like one sentence.
12 What I am looking at is, "or exhibit like any other, period.
13 When I allowed evidence -- testimony or exhibits -- for a
14 limited purpose only, I instructed you to consider that
15 evidence only for that limited, and you must do that." That
16 is at the top of Page 7.

17 MS. BLOCH: For the record, Your Honor, I believe
18 you in fact had embodied it in the document filed at 131 as
19 well.

20 THE COURT: The final jury instructions are
21 Document No. 139, so we now have to go make the copies.
22 Again, if I misread or do not clearly state one of your
23 corrections or changes that I agreed to, just stop me during
24 the closing and -- during the reading of the final jury
25 instructions and I will make the change.

1 MS. BLOCH: Your Honor, would it be inappropriate,
2 I just have one request with regard to the evidence for
3 purposes of going back into the jury room.

4 THE COURT: Sure.

5 MS. BLOCH: The only thing that I was going to
6 request that the jurors have back with them, in addition to
7 the binder with the images, not the CD images obviously, but I
8 just ask that Exhibit No. 18.1, which is the Steeler dress,
9 and image No. 12.1 through 12.3, which is the camera with the
10 memory card removed --

11 THE COURT: Any objection?

12 MS. BLOCH: Wait, one more. And Exhibit No. 25,
13 which is the separate calendar, and it's just that in the
14 binders it's kind of buried inside and I ask -- they have all
15 been admitted.

16 THE COURT: Any objection?

17 MR. CHONTOS: No, Judge.

18 THE COURT: They may go back to the jury room in
19 light of no objection.

20 MS. BLOCH: Thank you.

21 THE COURT: The final jury instructions will be
22 Document No. 140 on the docket -- that's the verdict form. So
23 the final verdict form will be Document No. 140.

24 MR. CHONTOS: Judge, on the verdict form, is there
25 any significant difference between 140 and document 90, which

1 90 is the proposed verdict form?

2 THE COURT: No.

3 MR. CHONTOS: Judge, my issue with 140, the verdict
4 form, is you tell them in your instruction that, as to
5 Counts 1 through 6, they need to be unanimous in which image
6 satisfies that count. That verdict form, as I am looking at
7 it, doesn't give them that ability to identify image 1.12A or
8 something along those lines.

9 THE COURT: I think we have discussed that before.

10 MR. CHONTOS: We have.

11 THE COURT: So I overrule that objection. I don't
12 believe that they need to put that on the verdict form. I
13 think it's sufficient that the instructions adequately cover
14 that issue, which it does.

15 We will stand in recess and you can go to the rest
16 rooms or whatever you want to do and I will get the Defendant
17 up here as soon as the copies are made.

18 MS. BLOCH: Thank you, Your Honor.

19 THE COURT: Thank you again.

20 (Recess taken.)

21 (After recess; on record in open court.)

22 THE COURT: We are currently in open court for the
23 final jury instructions. I would ask counsel for the
24 Government to enter your appearance, please.

25 MS. BLOCH: On behalf of the United States, Carolyn

1 Bloch.

2 THE COURT: On behalf of the Defendant?

3 MR. CHONTOS: Your Honor, David Chontos on behalf
4 of Mr. Warner.

5 THE COURT: The Defendant is with us, is that
6 correct?

7 MR. CHONTOS: He is seated right to my left.

8 THE COURT: Thank you.

9 Ladies and gentlemen, I apologize for your coming
10 in early and us not getting to you for an hour late, so again
11 my apologies in that regard.

12 The following are the final jury instructions. You
13 have a copy of those in front of you. You may listen, read
14 along, or both.

15 Now that you have heard the evidence and the
16 arguments, it is my duty to instruct you on the law. We have
17 given you copies of the special verdict form on which you will
18 answer specific questions. I ask you to take a few moments to
19 read the verdict form because the instructions I will give you
20 will help you answer those questions. So if you would please
21 look at the jury form, and they are the questions that you
22 will have to answer during your deliberation. My instructions
23 are to help guide you in that process.

24 When you retire to the jury room to deliberate you
25 may take these instructions with you, along with your notes,

1 the exhibits that the Court has admitted into evidence, and
2 the verdict form.

3 You should select one of your number, one member of
4 the jury as your foreperson. That person will preside over
5 your deliberations and speak for you here in open court.

6 You have two main duties as jurors. The first one
7 is to decide what the facts are from the evidence you saw and
8 heard here in court. Deciding what the facts are is your job,
9 not mine, and nothing I have said or done during this trial is
10 meant to influence your decision about the facts in any way.

11 Your second duty is to take the law that I give
12 you, apply it to the facts, and decide if, under the
13 appropriate burden of proof, the parties have established
14 their claims. In other words, it is your duty to determine
15 from the evidence what actually happened in this case,
16 applying the law as I now explain it.

17 It is my job to instruct you about the law and you
18 are bound by the oath that you took at the beginning of the
19 trial to follow the instructions that I give you, even if you
20 personally disagree with them. This includes the instructions
21 that I gave you before and during the trial and these
22 instructions.

23 All instructions are important and you should
24 consider them together as a whole. Do not disregard or give
25 special attention to any one instruction. Do not question the

1 wisdom of any rule of law or rule of evidence I state. In
2 other words, do not substitute your notion or opinion as to
3 what the law is or ought to be. Performing these duties
4 fairly -- perform these duties fairly. Do not let any bias,
5 sympathy, or prejudice that you may feel towards one side or
6 the other influence your decision in any way.

7 As jurors, you have the duty to consult with each
8 other and to deliberate with the intent of reaching a verdict.
9 Each of you must decide the case for yourself, but only after
10 a full and impartial consideration of all the evidence with
11 your fellow jurors.

12 Listen to each other carefully. In the course of
13 your deliberations you should feel free to reexamine your own
14 views and change your opinion based on the evidence, but you
15 should not give up your honest conviction about the evidence
16 just because of the opinion of your fellow jurors. You should
17 not change your mind just for the purpose of obtaining enough
18 votes for a verdict.

19 When you start deliberating, do not talk to the
20 jury officers, me, or to anyone else but each other about the
21 case. During your deliberations you must not communicate
22 with, provide any information to anyone by means -- by any
23 means about this case. You may not use any electronic device
24 or media such as a cell phone, smartphone, like BlackBerrys,
25 Droids, iPhones, or computer of any kind, the Internet, any

1 Internet service, or any text or instant messaging service,
2 such as Twitter, or any Internet chat room, blog, website, or
3 social networking service, such as Facebook, Twitter, MySpace,
4 LinkedIn, or YouTube to communicate to anyone any information
5 about the case or to conduct any research about the case until
6 I accept your verdict.

7 If you have any questions or messages for me, you
8 must write them down on a piece of paper, have the foreman
9 sign them -- foreperson sign them, and give them to the jury
10 officer. The officer will give them to me and I will respond
11 as soon as I can. I may have to talk to the lawyers about
12 what you have asked, so it may take some time to get back to
13 you.

14 One important thing about messages. Never write
15 down or tell anyone how you stand on your votes. For example,
16 do not write down or tell anyone that a certain number is
17 voting one way or other. Your vote should stay secret until
18 you are finished.

19 Your verdict must represent the considered judgment
20 of each juror. In order for you as a jury to return a
21 verdict, each juror must agree to the verdict. Your verdict
22 must be unanimous.

23 A verdict form has been prepared for you. It has a
24 series of questions for you to answer. You will take this
25 form to the jury room. And when you have reached unanimous

1 agreement as to your verdict, you will fill it in, have the
2 foreperson sign and date the form, and you will see on the
3 form there is also a place for each of you to sign, each juror
4 must sign the form. You will then return to court and the
5 foreperson will give your verdict. Unless I instruct you
6 otherwise, do not reveal your answers until you are
7 discharged.

8 After you have reached a verdict you are not
9 required to talk to anyone about the case unless I order you
10 to do so.

11 Once again, I remind you that there's nothing about
12 my instructions and nothing about the form of verdict that is
13 intended to suggest or convey in any way or manner what I
14 think the verdict should be. It is your sole and exclusive
15 duty and responsibility to determine the verdict.

16 Now we are going to talk about evidence. The
17 evidence in this case consists of the testimony of witnesses,
18 documents and other physical items, if any, received as
19 exhibits, and any facts stipulated by the parties. The
20 evidence from which you are to find the facts consists of the
21 following:

22 One, the testimony of the witnesses and documents
23 and other things received as exhibits.

24 The following things are not evidence:

25 One, the superseding indictment.

1 Two, statements, arguments, questions, and comments
2 by the lawyers are not evidence.

3 Three, likewise, objections are not evidence. As I
4 told you in my preliminary instructions, the Rules of Evidence
5 control what can be -- what can be received into evidence.
6 During the trial the lawyers objected when they thought that
7 the evidence that was offered was not permitted under the
8 Rules of Evidence. These objections simply meant that the
9 lawyers were asking me to decide whether the evidence should
10 be allowed under the rules.

11 You should not be influenced by the fact that an
12 objection was made. You should also not be influenced by my
13 rulings on the objection or any sidebar conferences you may
14 have overheard.

15 When I overruled an objection, the question was
16 answered or the exhibit was received into evidence, and you
17 should treat that testimony or exhibit like any other.

18 When I sustain an objection, the question -- when I
19 sustained an objection, the question was not answered or the
20 exhibit was not received into evidence. You must disregard
21 the question or the exhibit entirely. Do not think about or
22 question what the witness might have said in answer to the
23 question and do not think or guess what the exhibit might have
24 shown.

25 Sometimes the witness may already have answered

1 before a lawyer objected or before I ruled on the objection.
2 If that happened and if I sustained the objection, you must
3 disregard the answer that was given.

4 Four, the testimony that I ordered stricken from
5 the record or told you to disregard is not evidence and you
6 must not consider any such matter.

7 Five, anything you saw or heard about this case
8 outside the courtroom is not evidence. You must decide the
9 case only on the evidence presented here in the courtroom. Do
10 not let rumor, suspicion, or anything else that you may see or
11 hear outside the court influence your decision in any way.
12 Also, do not assume from anything that I have done or said
13 during the trial that I have any opinion about any of the
14 issues in the case or about what your verdict should be.

15 The exhibits meet the standards of the Rules of
16 Evidence and, therefore, have been admitted for your
17 consideration. Any inference or conclusion that you draw from
18 any exhibit is within your power as a fact-finder.

19 You should use your common sense in weighing the
20 evidence. Consider it in the light of your everyday
21 experience with people and events and give it whatever weight
22 you believe it deserves. If your experience and common sense
23 tells you that certain evidence reasonably leads to a
24 conclusion, you may reach that conclusion.

25 Two types of evidence may be used in a trial:

1 Direct and circumstantial, or indirect, evidence. You may use
2 both types of evidence in reaching your verdict.

3 Direct evidence is simply evidence which, if
4 believed, directly proves a fact. An example of direct
5 evidence occurs when a witness testifies about something the
6 witness knows from his or her own senses, something that the
7 witness has seen, touched, heard, or smelled.

8 Circumstantial evidence is evidence which, if
9 believed, indirectly proves a fact. It is evidence that
10 proves one or more facts from which you could reasonably find
11 or infer the existence of some other fact or facts.

12 A reasonable inference is simply a deduction or
13 conclusion that reason, experience, and common sense leads you
14 to make from the evidence. A reasonable inference is not a
15 suspicion or a guess. It is a reasoned, logical decision to
16 find that a disputed fact exists based on another fact.

17 For example, if someone walked into the courtroom
18 wearing a wet raincoat and carrying a wet umbrella, that would
19 be circumstantial, indirect evidence from which you could
20 reasonably find or conclude it was raining. You would not
21 have to find it was raining, but you could.

22 Sometimes different inferences may be drawn from
23 the same set of facts. The Government may ask you to draw one
24 inference and the defense may ask you to draw another. You
25 and you alone must decide what reasonable inferences you will

1 draw based upon all the evidence and your reason, experience,
2 and common sense.

3 You should consider all the evidence that's
4 presented in this trial, direct and circumstantial. The law
5 makes no distinction between the weight that you would give to
6 either direct or circumstantial evidence. It is for you to
7 decide how much weight to give evidence.

8 You may not allow sympathy or personal feelings to
9 influence your determination. Your duty is to decide the case
10 solely on the basis of the evidence or lack of evidence and
11 the law as I instruct you without bias, prejudice, or sympathy
12 for or against the parties or their counsel.

13 Both the parties and the public expect that you
14 will carefully and impartially consider all the evidence in
15 the case, follow the law as stated by the Court, and reach a
16 just verdict regardless of the consequences.

17 You have been shown certain images that have been
18 admitted into evidence. These images were shown only to
19 assist you in determining whether the Government has met its
20 burden of proof -- its burden to prove the Defendant guilty of
21 all of the elements of the charges against him.

22 You should not allow any feelings you may have
23 regarding these images to affect this determination in any
24 manner. You should consider these images in the same
25 unbiased, impartial way as you would any other piece of

1 evidence offered by either side in the case.

2 Your juror notes are not evidence in the case and
3 you must -- they must not take precedence over your own
4 independent recollection of the evidence. Notes are only an
5 aid to your recollection and are not entitled to greater
6 weight than the recollection of what the evidence actually is.
7 You should not disclose any notes you have taken to anyone
8 other than a fellow juror.

9 You were not obligated to take notes. If you did
10 not take notes, you should not be influenced by the notes of
11 another juror, but instead rely upon your own recollection of
12 the evidence.

13 I am now going speak about credibility or
14 believability of witnesses and weight of testimony in general.
15 You must consider all the evidence. This does not mean you
16 must accept all the evidence as true or accurate. You are the
17 sole judges of the credibility or believability of the
18 witnesses and the weight their testimony deserves. You may be
19 guided by the appearance and conduct of the witness, by the
20 manner in which the witness testifies, by the character of the
21 testimony given, and by evidence or testimony to the contrary.

22 You should carefully scrutinize all the testimony
23 given, the circumstances under which each witness has
24 testified, and every matter in evidence which tends to show
25 whether a witness is worthy of belief.

1 Consider each witness' intelligence, motive, state
2 of mind, and demeanor or manner while on the stand.

3 Consider the witness' ability to observe the
4 matters to which he or she has testified and whether he or she
5 impresses you as having an accurate recollection of these
6 matters.

7 Consider any business, personal, or other
8 relationship a witness may have with either side of the case,
9 the manner in which each witness might be affected by the
10 verdict, and the extent to which, if at all, the witness is
11 either supported or contradicted by other evidence in the
12 case.

13 As I stated in my preliminary instructions at the
14 beginning of the trial, in deciding what the facts are, you
15 must decide what testimony you believe and what testimony you
16 do not believe. You are the sole judges of the credibility or
17 believability of the witnesses.

18 Credibility refers to whether a witness is worthy
19 of belief. Was the witness truthful? Was the witness'
20 testimony accurate? You may believe everything a witness says
21 or part of it or none of it.

22 You may decide whether to believe a witness based
23 on his or her behavior and manner of testifying, the
24 explanation the witness gave, and all the other evidence in
25 the case, just as you would in any important matter where you

1 are trying to decide if a person is truthful, straightforward,
2 and accurate in his or her recollection. In deciding the
3 question of credibility, remember to use your common sense,
4 your good judgment, and your experience.

5 You are not required to accept testimony even if
6 the testimony is not contradicted. You may decide that a
7 witness is not worthy of belief because of the witness'
8 bearing and demeanor or because of the inherent improbability
9 of the testimony, or for any other reason that -- reasons that
10 are sufficient to you.

11 In deciding what to believe, including any child
12 witness, you may consider a number of factors:

13 One, the opportunity and ability of the witness to
14 see or hear or know the things about which the witness
15 testifies.

16 Two, the quality of the witness' knowledge,
17 understanding, and memory.

18 Three, the witness' appearance, behavior, and
19 manner while testifying.

20 Four, whether the witness has an interest in the
21 outcome of the case or any motive, bias, or prejudice.

22 Five, any relationship the witness may have with
23 the party in the case and any effect the verdict may have on
24 the witness.

25 Six, whether the witness said or wrote anything

1 before trial that was different from the witness' testimony in
2 court.

3 Seven, whether the witness' testimony was
4 consistent or inconsistent with the evidence that you believe.

5 And, eight, any other factor that bears on whether
6 the witness should be believed.

7 After you have made your own judgment about the
8 believability of a witness, you can then attach to the
9 witness' testimony the importance or weight that you think it
10 deserves.

11 Inconsistencies or discrepancies in a witness'
12 testimony or between the testimony of different witnesses may
13 or may not cause you to disbelieve a witness' testimony. Two
14 or more persons witnessing an event may simply see or hear it
15 differently. Mistaken recollection, like the failure to
16 recall, is a common human experience. In weighing the effect
17 of a discrepancy, always consider whether it pertains to a
18 matter of importance or an unimportant detail. You should
19 also consider whether the inconsistency was innocent or
20 intentional.

21 If you find a witness has lied to you in any
22 material portion of his or her testimony, you may disregard
23 the witness' testimony in its entirety. I say that you may
24 disregard such testimony, not that you must. However, you
25 should consider whether the untrue part of the testimony was a

1 result of a mistake or inadvertence or was, rather, willful
2 and stated with a design or intent to deceive.

3 Again, after making your own judgment, give the
4 testimony of each witness the weight you think it deserves.
5 You may, in short, accept or reject the testimony of any
6 witness in whole or in part.

7 You are not required to accept any testimony, even
8 though the testimony is not contradicted. You may decide
9 because of a witness' bearing or demeanor, because of the
10 inherent improbability of his or her testimony, or for other
11 reasons sufficient to you that such testimony is not worthy of
12 belief.

13 The weight of the evidence to prove a fact does not
14 necessarily depend on the number of witnesses who testified or
15 the quantity of evidence that was presented. In short, what
16 is important is how believable the witnesses were and how much
17 weight you think their testimony deserves.

18 Although the Government is required to prove the
19 Defendant guilty beyond a reasonable doubt, the Government is
20 not required to present all possible evidence relating to the
21 case or to produce all possible witnesses who might have
22 knowledge about the facts of the case. In addition, as I have
23 explained, the Defendant is not required to produce any
24 evidence or produce any witnesses.

25 In this case the Defendant, Earl Warner, presented

1 evidence through various witnesses. Mr. Warner is not
2 required to present all possible evidence relating to the case
3 or to produce all possible witnesses who might have knowledge
4 about some facts of the case.

5 The Rules of Evidence ordinarily do not permit a
6 witness to testify as to their own opinions or their own
7 conclusions about important questions in trial. An exception
8 to this rule exists as to those witnesses who are described as
9 expert witnesses. An expert witness is someone who by
10 training, experience, or education may have become
11 knowledgeable in some technical, scientific, or very
12 specialized area. If such knowledge or experience may be of
13 assistance to you in understanding some of the evidence or in
14 determining a fact, an expert witness in that area may state
15 an opinion as to a matter in which he or she claims to be an
16 expert.

17 You should consider each expert opinion received in
18 evidence in this case and give it such weight as you may think
19 it deserves.

20 You should consider the testimony of an expert
21 witness just as you consider other evidence in the case. You
22 should decide -- if you decide that the opinion of the expert
23 is not based upon sufficient education or experience or if you
24 should conclude that the reasons given in support of the
25 opinion are not sound or if you should conclude that the

1 opinion is outweighed by other evidence, you may disregard the
2 opinion in part or in its entirety.

3 In weighing this opinion testimony, you may
4 consider the witness' qualifications, their opinions, the
5 reasons for testifying, as well as all the other
6 considerations that ordinarily apply when you are deciding
7 whether or not to believe a witness' testimony.

8 You may give the opinion testimony whatever weight,
9 if any, you find it deserves in light of all the evidence in
10 the case. You should not, however, accept opinion testimony
11 merely because I allowed the witness to testify concerning his
12 or her opinion. Nor should you substitute it for your own
13 reason, judgment, and common sense. The determination of the
14 facts in this case rests solely with you.

15 You have heard the testimony of law enforcement
16 officers. The fact that a witness is employed as a law
17 enforcement officer does not mean that his testimony
18 necessarily deserves more or less consideration or greater or
19 lesser weight than that of any other witness. You must decide
20 after reviewing all the evidence whether you believe the
21 testimony of a law enforcement witness and how much weight, if
22 any, it deserves.

23 You have heard reputation and opinion evidence
24 about whether the Defendant has a character trait for
25 honesty -- truthfulness and honesty. You should consider this

1 character evidence together with and in the same way as all
2 the other evidence in the case in deciding whether the
3 Government has proved the charges beyond a reasonable doubt.

4 Now we are going to speak about the presumption of
5 innocence, the burden of proof, and reasonable doubt.

6 The Defendant, Earl Warner, pled not guilty to the
7 offenses charged. Mr. Warner is presumed to be innocent. He
8 starts the trial with a clean slate, with no evidence against
9 him.

10 The presumption of innocence stays with Mr. Warner
11 unless and until the Government has presented evidence that
12 overcomes that presumption by convincing you that Mr. Warner
13 is guilty of an offense charged beyond a reasonable doubt.

14 The presumption of innocence requires that you find
15 Mr. Warner not guilty unless you are satisfied that the
16 Government has proved his guilt beyond a reasonable doubt.

17 The presumption of innocence means that Mr. Warner
18 has no burden or obligation to present any evidence at all or
19 to prove that he's not guilty. The burden or obligation of
20 proof is on the Government to prove Mr. Warner is guilty, and
21 that burden stays with the Government throughout the trial.

22 In order for you to find Mr. Warner guilty of the
23 offense -- of an offense charged, the Government must convince
24 you that Mr. Warner is guilty beyond a reasonable doubt. That
25 means the Government must prove each and every element of an

1 offense charged beyond a reasonable doubt. The Defendant may
2 not be convicted based upon suspicion or conjecture, but only
3 on evidence proving guilt beyond a reasonable doubt.

4 Proof beyond a reasonable doubt does not mean proof
5 beyond all possible doubt or to a mathematical certainty.
6 Possible doubts or doubts based upon conjecture, speculation,
7 or hunch are not reasonable doubts. A reasonable doubt is a
8 fair doubt based on reason, logic, common sense, or
9 experience. It is a doubt that an ordinary person has,
10 ordinary reasonable person has after carefully weighing all
11 the evidence and is a doubt of the sort that would cause him
12 or her to hesitate to act in matters of importance in his or
13 her own life. It may arise from the evidence or from the lack
14 of evidence or from the nature of the evidence.

15 If having heard all the evidence you are convinced
16 the Government has proved each and every element of an offense
17 charged beyond a reasonable doubt, you should return a verdict
18 of guilty for that offense. However, if you have a reasonable
19 doubt about one or more elements of an offense charged, then
20 you may return a verdict of not guilty -- then you must return
21 a verdict of not guilty of that offense.

22 Now I am going to speak about the indictment. As
23 you know, the Defendant, Mr. Warner, is charged in a
24 superseding indictment with violating federal law,
25 specifically, six counts of production of material depicting

1 the sexual exploitation of a minor, and one count of
2 possession of material depicting the sexual exploitation of a
3 minor.

4 As I explained at the beginning of the trial, an
5 indictment or in this case a superseding indictment is just
6 the formal way of specifying the exact crimes the Defendant is
7 accused of committing. A superseding indictment is simply a
8 description of the charges against the Defendant. It is only
9 an accusation. A superseding indictment is not evidence of
10 anything and you should not give any weight to the fact that
11 Mr. Warner has been indicted in your decision in this case.

12 You will note that the superseding indictment
13 charges the Defendant was -- that the offense or offenses were
14 committed on or about certain dates. The Government does not
15 have to prove with certainty the exact dates of the alleged
16 offense. It is sufficient for the Government to prove beyond
17 a reasonable doubt that the offense was committed on dates
18 reasonably near the dates alleged.

19 The superseding indictment alleges that some of the
20 acts in furtherance of the events charged occurred here in the
21 Western District of Pennsylvania. There are no requirements
22 that all aspects of the offense charged take place in the
23 Western District of Pennsylvania. But for you to return a
24 guilty verdict, the Government must convince you that some act
25 in furtherance of the crime took place here in the Western

1 District of Pennsylvania.

2 Unlike all the elements I have described, venue
3 only has to be proved by a preponderance of the evidence.
4 This means that the Government only has to convince you that
5 it is more likely than not that some act in furtherance of the
6 crime charged took place here.

7 Remember, the Government must prove all of the
8 other elements I have described beyond a reasonable doubt.

9 Now I am going to speak about the elements of the
10 offenses charged. The Defendant is charged in the superseding
11 indictment with committing two different offenses. Each of
12 these offenses has essential elements. To find the Defendant
13 guilty of an offense you must all find that the Government
14 proved each element of that offense beyond a reasonable doubt.
15 I will explain the elements of each offense in more detail
16 shortly.

17 The counts in the superseding indictment charge the
18 Defendant with doing certain acts in conjunction -- in the
19 conjunctive by using the word "and." As used in the
20 superseding indictment, the word "and" is synonymous with the
21 word "or." Thus, to prove particular elements of a crime that
22 are charged in the conjunctive, the Government need not prove
23 that the Defendant did each of these acts. It is sufficient
24 if the Government proves beyond a reasonable doubt that the
25 Defendant did any of these alternative acts as charged.

1 Defendant is charged with two offenses. Each
2 offense is charged as a separate count in the superseding
3 indictment. The number of offenses charged is not evidence of
4 guilt and this should not influence your decision in any way.
5 You must separately consider the evidence that relates to each
6 offense and you must return a separate verdict for each
7 offense. For each offense charged you must decide whether the
8 Government has proved beyond a reasonable doubt that the
9 Defendant is guilty of that offense. Your decision on one
10 offense, whether guilty or not, must not influence your
11 decision on any of the other offenses charged. Each offense
12 must be considered separately.

13 Counts 1 through 6, production of materials
14 depicting sexually -- the sexual exploitation of a minor.
15 Defendant is charged in Counts 1 through 6 in the superseding
16 indictment with production of materials depicting the sexual
17 exploitation of a minor with respect to specific minors on the
18 following days and times.

19 Count 1 charges the Defendant with production of
20 child pornography on or about June 4, 2011, from at or about
21 6:34 a.m. to at or about 9:21 a.m. as to victim MC.

22 Count 2 charges Defendant with production of child
23 pornography on or about June 8, 2011, from at or about
24 3:09 a.m. to at or about 3:53 a.m. as to victim FW.

25 Count 3 charges the Defendant with production of

1 child pornography on or about June 12, 2011, from at or about
2 9:24 a.m. to at or about 9:49 a.m. as to victim FW.

3 Count 4 charges the Defendant with production of
4 child pornography on or about June 13, 2011, from at or about
5 5:40 a.m. to at or about 5:53 a.m. as to victim HE.

6 Count 5 charges the Defendant with production of
7 child pornography on or about July 13th, 2011, as to FW.

8 Count 6 charges Defendant with production of child
9 pornography on or about July 23rd, 2011, as to FW.

10 Counts 1 through 6 of the superseding indictment
11 charging production of material depicting sexually explicit --
12 sexual exploitation of a minor has three elements:

13 First, at the time of the offense the victim
14 depicted was under the age of 18.

15 Two, the Defendant employed, used, persuaded, or
16 coerced the victim to take part in sexually explicit conduct
17 for the purpose of producing one or more visual depictions of
18 such conduct.

19 And, three, the visual depiction was produced using
20 material that had been mailed, shipped, or transported in
21 interstate or foreign commerce by any means.

22 Speaking now to Count 7, possession of material
23 depicting the sexual exploitation of a minor. Defendant is
24 charged in Count 7 of the superseding indictment with
25 possession of material depicting the sexual exploitation of a

1 minor on or about April 9, 2012.

2 Count 7 of the superseding indictment charging the
3 Defendant with possession of material depicting the sexual
4 exploitation of a minor has three elements:

5 First, that the Defendant knowingly possessed one
6 or more items which contained a visual depiction of a minor
7 engaged in a sexually explicit conduct.

8 Second, that the item which contained the visual
9 depiction had been mailed, transported, or shipped in
10 interstate commerce or had been produced using material that
11 had been mailed or transported or shipped in interstate
12 commerce.

13 And, three, the production of the visual depictions
14 involved the use of a minor engaged in a sexually explicit
15 conduct as these terms are defined in Title 18 United States
16 Code Section 2256.

17 Although you have heard evidence regarding multiple
18 images of material depicting the sexual exploitation of a
19 minor, to find the Defendant guilty of producing or possessing
20 material depicting the sexual exploitation of a minor, you
21 must only find beyond a reasonable doubt that the Defendant
22 produced and/or possessed at least one single image depicting
23 the sexual exploitation of a minor on or about the date
24 charged.

25 Further, you must be unanimous -- you must

1 unanimously agree as to which such visual image or images he
2 produced and/or possessed.

3 We are now going to speak about some definitions.
4 First of all, as to "knowing." The offense of producing and
5 possessing material depicting the sexual exploitation of a
6 minor charged in the superseding indictment requires that the
7 Government prove that Earl Warner acted knowingly with respect
8 to the first element of each of these offenses.

9 Often the state of mind or knowledge with which a
10 person acts at any time cannot be proved directly because one
11 cannot read another person's mind and tell what he or she is
12 thinking. The Government, however, may prove Earl Warner's
13 state of mind indirectly from the surrounding circumstances
14 and the evidence presented.

15 Thus, to determine whether Earl Warner knew at a
16 particular time -- thus, to determine what Earl Warner knew at
17 a particular time, you must consider evidence about what Earl
18 Warner said, what Earl Warner did or failed to do, how Earl
19 Warner acted, and all the other facts and circumstances
20 surrounding the evidence that may prove what was in Earl
21 Warner's mind at the time. It is entirely up to you to decide
22 what the evidence presented during this trial proves or fails
23 to prove about Earl Warner's state of mind.

24 You may also consider the natural and probable
25 result or consequences of any act Earl Warner knowingly did

1 and whether it is reasonable to conclude that Earl Warner
2 intended those results or consequences. You may also -- you
3 may find, but you are not required to find, that Earl Warner
4 knew and intended the natural and probable consequences or
5 results of the acts he knowingly did. This means that if you
6 find that an ordinary person in Earl Warner's situation would
7 have naturally realized certain consequences would result from
8 his action, then you may find, but you are not required to
9 find, that Earl Warner did know and did intend that those
10 consequences would result from his action. This is entirely
11 up to you to decide as the finders of fact in this case.

12 The Government is not required to prove that Earl
13 Warner knew his acts were against the law.

14 Sexually explicit conduct includes the actual or
15 simulated masturbation or lascivious exhibition of the
16 genitals or pubic area of any person.

17 For a visual depiction of genitals or pubic area of
18 a minor to be considered sexually explicit, the exhibition
19 must be lascivious. Not every exposure of the genitals or
20 pubic areas will necessarily be a lascivious exhibition.
21 Whether a picture or image of genitals or pubic area
22 constitutes a lascivious exhibition requires the consideration
23 of the overall context of the material.

24 In determining whether an exhibition of the
25 genitals or pubic area of a minor is lascivious, you must

1 consider the following:

2 (A), whether the focal point of the visual
3 depiction is on the minor's genitals or pubic area.

4 (B), whether the setting of the visual depiction is
5 sexually explicit -- sexually suggestive, that is, a place or
6 pose generally associated with sexual activity.

7 (C), whether the minor is depicted in an unnatural
8 pose or in inappropriate attire considering the age of the
9 minor.

10 (D), whether the minor is fully or partially
11 clothed or nude.

12 (E), whether the visual depiction suggests coyness
13 or a willingness to engage in sexual activity.

14 And, (F), whether the visual depiction is intended
15 or designed to elicit a sexual response in the viewer.

16 As to this last factor, it is not necessary that
17 the image be intended or designed to elicit a sexual response
18 in the average viewer.

19 A picture or image need not involve all these
20 factors to constitute lascivious exhibition of the genitals or
21 pubic area. It is for you to decide what, if any, weight to
22 be given to any of these factors. Ultimately you must
23 determine whether the visual depiction is lascivious based
24 upon the overall content.

25 Now I will give you the definition of "possession."

1 Count 7 of the superseding indictment charges the Defendant
2 with possession of material depicting the sexual exploitation
3 of a minor. The word "possess" means to own or to exert
4 control over. The word "possession" can take on several
5 different but related meanings.

6 The law recognizes two kinds of possession: Actual
7 possession and constructive possession. A person who
8 knowingly has direct physical control over a thing at a given
9 time is then in actual possession of it. A person who,
10 although not in actual possession, knowingly has both the
11 power and intent at a given time to exercise dominion or
12 control over a thing either directly or through another person
13 or persons is then in constructive possession of it.

14 The law recognizes that possession may be sole or
15 joint. If one person alone has actual or constructive
16 possession of a thing when possession is -- then possession is
17 sole. If two or more persons actually -- if two or more
18 persons share actual or constructive possession of a thing,
19 then the possession is joint.

20 You may find that the element of possession, as
21 that term is used in these instructions, is present if you
22 find beyond a reasonable doubt that the Defendant has actual
23 or constructive possession either alone or jointly with
24 others.

25 As to the definition for "commerce." Commerce

1 means travel, trade traffic, commerce, transportation, or
2 communication among or between the states, or the United
3 States and a foreign country.

4 The term "in interstate commerce" means that the
5 visual depictions or materials used to produce, transport, or
6 transmit the sexual depictions crossed state lines or national
7 borders.

8 The law does not require the Government to prove
9 that the Defendant knew the interstate nature of an instrument
10 on which a depiction of a child pornography is produced or
11 stored.

12 Often the state of mind -- intent, knowledge,
13 willfulness, or recklessness -- with which a person acts at
14 any given time cannot be proved directly because, as I said
15 previously, one cannot read another person's mind and tell
16 what he or she is thinking. However, a Defendant's state of
17 mind can be proved from the surrounding circumstances.

18 Thus, to determine the Defendant's state of mind or
19 what the Defendant intended or knew at any particular time,
20 you may consider all the evidence about what the Defendant
21 said, what the Defendant did or failed to do, how the
22 Defendant acted, and all the other facts and circumstances
23 shown by the evidence that may prove what was in the
24 Defendant's mind at the time.

25 It is entirely up to you to decide what the

1 evidence presented during the trial proves or fails to prove
2 about the Defendant's state of mind.

3 As I said previously, you may also consider the
4 nature and probable results or consequences of any acts the
5 Defendant knowingly did and whether it is reasonable to
6 conclude that Defendant intended those results or
7 consequences.

8 You may find but you are not required to find that
9 Defendant knew and intended the natural and probable
10 consequences or results of the acts that he knowingly did.
11 This means if you find that an ordinary person in the
12 Defendant's situation would have naturally realized that
13 certain consequences would result from his action, then you
14 may find, but you are not required to find, that the Defendant
15 did know and intend those consequences would result from his
16 actions. This is entirely up to you to decide as the finders
17 of fact.

18 Before I get to the process of jury instructions,
19 which are the last few pages, did I misread anything in the
20 jury instructions that needs corrected? On behalf of the
21 Government?

22 MS. BLOCH: I don't believe so, Your Honor, thank
23 you.

24 THE COURT: Did I misread anything in the jury
25 instructions?

1 MR. CHONTOS: I don't believe so, Judge.

2 THE COURT: I am going to speak about jury
3 deliberations and the process.

4 Your verdict must represent the considered judgment
5 of each juror. In order to return a verdict, it's necessary
6 that each juror agree. In other words, your verdict must be
7 unanimous. It is your duty as jurors to consult with one
8 another and to deliberate with a view to reaching an agreement
9 if you can do so without violation of your individual
10 judgments.

11 Each of you must decide the case for yourself, but
12 only after an impartial consideration of all the evidence in
13 the case with your fellow jurors.

14 In the course of your deliberations do not hesitate
15 to reexamine your own views and change your opinion if you're
16 convinced it is erroneous, but do not surrender your honest
17 conviction as to the weight or effect of the evidence solely
18 because of the opinion of your fellow jurors or for the mere
19 purpose of returning a verdict.

20 Remember, at all times you are not partisans,
21 you're judges, judges of the facts. Your sole interest is to
22 seek the truth from the evidence in the case.

23 Upon retiring to the jury room you should first
24 select one of your number to act as your foreperson who will
25 preside over your deliberation and will be your spokesperson

1 in court.

2 You can make the selection and conduct your
3 deliberation in whatever manner you think is best, but I offer
4 some suggestions that other jurors have found to be helpful to
5 allow full participation by all jurors and to arrive at a
6 verdict that satisfies everyone.

7 The foreperson should encourage open communication,
8 cooperation, and participation by all the jurors and be
9 willing and able to facilitate discussions when disagreements
10 or disputes arise.

11 The foreperson should let each of you speak and be
12 heard before expressing his or her views.

13 The foreperson should never attempt to promote or
14 permit anyone else to promote his or her personal opinions by
15 coercion or bullying.

16 The foreperson should make sure that the
17 deliberations are not rushed.

18 Some people are better at facilitating than others.
19 And if it becomes clear that someone else would be a more
20 effective foreperson, you may want to consider selecting a
21 different person with no hard feelings.

22 You may also think it wise to select a secretary to
23 record your votes, which probably should be cast by secret
24 ballot, and to keep track of whether everyone has spoken.

25 Some jurors think it's useful to take a preliminary

1 vote before discussions are started. However, such an early
2 vote often proves counterproductive for several reasons,
3 including it tends to lock in a particular point of view
4 before alternative points of view are covered. I really
5 encourage you, talk first before you take a vote.

6 You should listen carefully and attentively to each
7 other. Hear what each other is saying before responding.
8 Don't interrupt. Don't monopolize the discussion. Speak one
9 at a time. Be patient and respectful of others' opinions and
10 do not take it personally if somebody disagrees with you.

11 A verdict form has been prepared for you, and you
12 have reviewed a copy. We will pick up those copies and you
13 will take one original verdict form to the jury room. When
14 you have reached a unanimous agreement as to the verdict form
15 you will each sign it, have the foreperson date it, and you
16 will signal the bailiff that you're prepared to return to the
17 courtroom.

18 You will also be provided with the copies of these
19 instructions for your use.

20 If during the deliberations you desire to
21 communicate with the Court, please reduce your question, your
22 message or question to writing, signed by the foreperson, and
23 pass the note to the bailiff who will bring it to my
24 attention.

25 After consulting with your attorney -- with the

1 attorneys, I will respond as promptly as possible either in
2 writing or by having you return to the courtroom so I can
3 address you orally. I will caution you, again, however, with
4 regard to any message or question you may send, that you
5 should not state or specify your numerical division at that
6 time.

7 In addition, if you have a question, go back and
8 read the instruction. By that I don't mean to say that we
9 have anticipated any question one could have, but generally
10 questions very early in a case get the response of, "go read
11 the instructions again." So I just encourage you before you
12 send a question you make sure there's not -- the answer is not
13 in those jury instructions. Again, I am not encouraging or
14 discouraging questions, it's just that we have tried -- take
15 the time to go through the instructions again before you have
16 a question.

17 In addition, it is proper for me to add again that
18 nothing in these instructions and nothing in the verdict form
19 prepared for your convenience is meant to hint in any way what
20 your verdict should be. What the verdict is is your sole and
21 exclusive duty and responsibility.

22 You will note from the oath about to be given to
23 the bailiff that she as well as other persons are forbidden to
24 communicate in any way or manner with any member of the jury
25 on any subject touching on the merits of the case.

1 Any objection on behalf of the Government that was
2 not previously put on the record, if any?

3 MS. BLOCH: None, Your Honor, thank you.

4 THE COURT: Any objection to these instructions on
5 behalf of the Defendant, if any, that were not previously
6 mentioned in court filings or in open court?

7 MR. CHONTOS: Judge, I would just incorporate all
8 the ones that I have made previously.

9 THE COURT: All right. Alternates, you are not
10 permitted to participate in deliberations at this time because
11 it is a criminal case and we can only have 12 jurors. But
12 your responsibility continues. It certainly has happened to
13 me that for whatever reason one of the 12 jurors cannot
14 continue to serve and an alternate is brought into the
15 deliberation. So it is very important that you continue, the
16 two alternates, not to talk about the case among yourselves.

17 The deputy clerk or someone will tell you where to
18 be if we need you. We will bring you up if and when there is
19 a verdict. And I always meet with jurors afterwards, and you
20 will be part of that if you wish.

21 So I appreciate the time that you served. We
22 obviously need alternates in a case, but, again, please don't
23 talk even among the two of you about the case and we will
24 bring you back up if and when there is a verdict and you can
25 be part of our final meeting if you so choose.

1 Would you please swear the bailiff.

2 (Bailiffs duly sworn.)

3 THE COURT: Anything else before the jury begins
4 its deliberations? On behalf of the Government?

5 MS. BLOCH: Nothing, Your Honor, thank you.

6 THE COURT: Defendant?

7 MR. CHONTOS: No, Judge.

8 THE COURT: You may take the jury back to begin its
9 deliberations.

10 (Jury exits courtroom to begin deliberations.)

11 (In open court; jury not present.)

12 THE COURT: I would appreciate it if counsel gives
13 the deputy clerk your cell phone numbers, and I would ask
14 counsel to stay in the building so we don't have to have
15 people coming distances back here if there is a question
16 and/or a verdict. So please stay in the building. As cold as
17 it is outside, it's probably wise to do so anyway.

18 Anything else on behalf of the Government?

19 MS. BLOCH: No, Your Honor.

20 THE COURT: Defendant?

21 MR. CHONTOS: No, Judge.

22 THE COURT: Okay. Counsel, would you work with the
23 deputy clerk to make sure the correct exhibits go back to the
24 jury room.

25 MS. BLOCH: Certainly.

1 (Recess taken.)

2 (After recess; jury present in open court.)

3 THE COURT: Thank you, ladies and gentlemen of the
4 jury, for being patient while we gathered everyone to be here.

5 We have informed -- we have been informed by the
6 jury that they had reached a verdict. We have gathered all
7 interested parties to convene in open court to receive the
8 verdict.

9 I would ask counsel for the Government to enter
10 your appearance, please.

11 MS. BLOCH: On behalf of the United States, Carolyn
12 Bloch.

13 THE COURT: On behalf of the Defendant?

14 MR. CHONTOS: Your Honor, David Chontos on behalf
15 of Earl Warner.

16 THE COURT: Welcome. The Defendant is present,
17 correct?

18 MR. CHONTOS: He is seated to my left.

19 THE COURT: Thank you.

20 The jurors have entered the courtroom and have
21 assumed their seats in the jury box.

22 Who is the foreperson, please? Is the verdict form
23 completely filled out including all the boxes checked and
24 everyone having signed the document?

25 THE FOREPERSON: Yes, Your Honor.

1 THE COURT: And dated?

2 THE FOREPERSON: Yes, Your Honor.

3 THE COURT: You have the verdict in your hand, is
4 that correct?

5 THE FOREPERSON: Yes, sir.

6 THE COURT: Do you want to hand it to the bailiff
7 who will hold it a moment. Was the jury unanimous?

8 THE FOREPERSON: Yes, sir.

9 THE COURT: Ladies and gentlemen of the jury, I
10 want to inform you that jurors who sit in particularly
11 disturbing cases, such as involving child pornography, death
12 penalty, gang violence have counseling available in cases
13 where the evidence or testimony is difficult to deal with.
14 That counseling is available through the Employee Assistance
15 Program, which is offered to all court employees and jurors.

16 I have decided that this service will be available
17 to you, I will sign the appropriate order, you will have a
18 year to take advantage of that service if you wish. We will
19 give you all a letter with all the information you need, and
20 the service provides for up to six free counseling sessions.
21 It would all be private, and you will be given a number in
22 which to request such service. As I mentioned, it is totally
23 private whether you request it or not and your participation
24 therein.

25 I would ask the foreperson -- the bailiff to bring

1 me the verdict so I may inspect it for regularity.

2 I find the verdict form to be properly completed,
3 including signatures of each juror.

4 The verdict will now be read publicly, that's
5 called being published, so it will be read aloud in open
6 court. Pay close attention to the verdict as it is published
7 and read, and afterwards you will be polled to make sure each
8 of you individually state whether or not the verdict as
9 published constitutes your verdict in every respect.

10 The deputy will publish the verdict at this time.

11 THE LAW CLERK: In the case of United States of
12 America versus Earl D. Warner, the verdict form reads as
13 follows:

14 We the jury in the above-captioned case have
15 unanimously made the following findings:

16 No. 1, as to Count 1, production of child
17 pornography involving child victim MC, the jury finds
18 Defendant, Earl D. Warner, guilty.

19 No. 2, as to Count 2, production of child
20 pornography involving child victim FW, the jury finds
21 Defendant, Earl D. Warner, guilty.

22 Count 3, as to Count 3, production of child
23 pornography involving child victim FW, the jury finds
24 Defendant, Earl D. Warner, guilty.

25 No. 4, as to Count 4, production of child

1 pornography involving child victim HE, the jury finds
2 Defendant, Earl D. Warner, guilty.

3 Five, as to Count 5, production of child
4 pornography involving child victim FW, the jury finds
5 Defendant, Earl D. Warner, guilty.

6 Six, as to Count 6, production of child pornography
7 involving child victim FW, the jury finds Defendant, Earl D.
8 Warner, guilty.

9 Seven, as to Count 7, possession of child
10 pornography, the jury finds Defendant, Earl D. Warner, guilty.

11 The verdict form is dated 24 January, 2014, and it
12 appears to have 12 signatures.

13 THE COURT: I would ask the deputy clerk to poll
14 the jury, please.

15 THE DEPUTY CLERK: As I call your number, please
16 stand and raise your right hand. After you have answered,
17 please be seated.

18 Juror No. 1, the verdict as was just read into the
19 record of the court, is this your verdict?

20 JUROR NO. 1: Yes, ma'am.

21 THE DEPUTY CLERK: Juror No. 81, the verdict as was
22 just read into the record of this court, is this your verdict?

23 JUROR NO. 81: Yes, ma'am.

24 THE DEPUTY CLERK: Juror No. 38, the verdict as was
25 just read into the record of this court, is this your verdict?

1 JUROR NO. 38: Yes, ma'am.

2 THE DEPUTY CLERK: Juror No. 50, the verdict as was
3 just read into the record of the court, is this your verdict?

4 JUROR NO. 50: Yes, ma'am.

5 THE DEPUTY CLERK: Juror No. 2, the verdict as was
6 just read into the record of the court, is this your verdict?

7 JUROR NO. 2: Yes, ma'am.

8 THE DEPUTY CLERK: Juror No. 29, the verdict as was
9 just read into the record of the court, is this your verdict?

10 JUROR NO. 29: Yes, ma'am.

11 THE DEPUTY CLERK: Juror No. 78, the verdict as was
12 just read into the record of the court, is this your verdict?

13 JUROR NO. 78: Yes, ma'am.

14 THE DEPUTY CLERK: Juror No. 69, the verdict as was
15 just read into the record of the court, is this your verdict?

16 JUROR NO. 69: Yes.

17 THE DEPUTY CLERK: Juror No. 3, the verdict as was
18 just read into the record of the court, is this your verdict?

19 JUROR NO. 3: It is.

20 THE DEPUTY CLERK: Juror No. 51, the verdict as was
21 just read into the record of the court, is this your verdict?

22 JUROR NO. 51: Yes.

23 THE DEPUTY CLERK: Juror No. 33, the verdict as was
24 just read into the record of the court, is this your verdict?

25 JUROR NO. 33: Yes.

1 THE DEPUTY CLERK: Juror No. 15, the verdict as was
2 just read into the record of the court, is this your verdict?

3 JUROR NO. 15: Yes.

4 THE DEPUTY CLERK: That concludes the polling of
5 the jury, Your Honor.

6 THE COURT: The polling of the jury verifies the
7 unanimous verdict. I direct the deputy clerk to file and
8 record the verdict.

9 Ladies and gentlemen of the jury, before I
10 discharge you, I want to tell you that I have entered an order
11 which will permit you, if you wish, to obtain the counseling
12 sessions that I mentioned. As I said, that was entered before
13 your discharge.

14 On behalf of the court, I want to thank you very
15 much for working through this case and for your diligence.
16 You paid attention throughout, you have taken notes, and so I
17 thank you for your effort in that regard.

18 I want to thank the alternates. Even though they
19 didn't participate, they are an important part of this
20 process.

21 If you wish, I will come back and visit with you in
22 the jury room for awhile. Those of you who want to leave
23 certainly may leave, but I will come back and spend some time
24 with you.

25 We have a letter for each of you setting forth

1 information relating to the counseling services that I
2 mentioned.

3 Anything from Government counsel before I discharge
4 the jury?

5 MS. BLOCH: Nothing from the Government.

6 THE COURT: On behalf of the Defendant?

7 MR. CHONTOS: No, Judge.

8 THE COURT: With that, ladies and gentlemen of the
9 jury, you are now discharged. You can go back to the jury
10 room and I will be back to see you in a moment.

11 (Jury exits courtroom.)

12 (In open court; jury not present.)

13 THE COURT: I have set the sentencing for
14 June 6th, 2014. Any objection to that date on behalf of the
15 Government?

16 MS. BLOCH: No objection, Your Honor.

17 THE COURT: I will give defense counsel a moment to
18 check his electronic calendar.

19 MR. CHONTOS: Thanks, Judge.

20 THE COURT: June 6th at 9:30.

21 MR. CHONTOS: We are good to go.

22 THE COURT: Okay. I would appreciate it if
23 everyone would remain seated and the marshals may remove the
24 Defendant.

25 (Record closed.)

C E R T I F I C A T E

I, Richard T. Ford, certify that the foregoing
is a correct transcript from the record of proceedings in the
above-titled matter.

S/Richard T. Ford _____